



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2011

Ms. Luz E. Sandoval Walker
Assistant City Attorney
City of El Paso
810 Overland
El Paso, Texas 79901

OR2011-03955

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 411977 (El Paso Case Number 2011-01-13-AG).

The El Paso Police Department (the "department") received two requests for information pertaining to case numbers 10-354236 and 10-352094. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, C, and D.

Fam. Code § 58.007(c). For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You claim report number 10-354236 is confidential under section 58.007. However, that report reflects the individual suspected of conduct indicating a need for supervision was seventeen years old at the time of the alleged offense. Thus, we find the information does not involve a child, for purposes of section 58.007, as a suspect or offender. Therefore, we conclude report number 10-354236 may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. As you raise no other exceptions to disclosure of report number 10-354236, it must be released.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Id. § 261.201(a), (k)-(l). You represent report number 10-352094 was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261), 101.003(a) (defining "child" as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Accordingly, we find report number 10-352094 is subject to section 261.201.

However, the submitted information reflects the requestor is the stepfather of the child victim, and may be seeking the report behalf of the child's mother. We note the mother is not alleged to have committed the abuse. Thus, the requestor may have a right of access to the submitted information pursuant to section 261.201(k). If the requestor is not the authorized representative of the child victim's mother, then the department must withhold report number 10-352094 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a). However, if the requestor is seeking the report as the authorized representative of the child victim's mother, then pursuant to section 261.201(k), the department may not withhold the submitted report from the requestor under section 261.201(a). *Id.* § 261.201(k). Section 261.201(l)(2) states, however, that any information excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). You also raise section 552.108 of the

Government Code for report number 10-352094. Therefore, in accordance with section 261.201(l)(2) of the Family Code, we consider the applicability of this exception.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you provide a letter from the Office of the District Attorney for the 34th Judicial District stating report number 10-352094 is pending prosecution. Based on this representation and our review, we conclude release of report number 10-352094 at this time would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code is applicable to report number 10-352094.

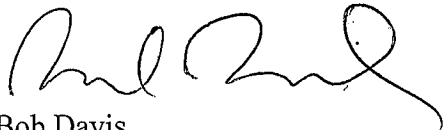
We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*, and includes the complainant’s identity. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The complainant in the submitted report is also the reporting party. Section 261.201(l)(3) of the Family Code states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). Fam. Code § 261.201(l)(3). Thus, with the exception of basic information, the department may withhold report number 10-352094 under section 552.108(a)(1) of the Government Code. However, in releasing basic information, the department must withhold the reporting party’s identity we marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

In summary, report number 10-354236 must be released. If the requestor is not the authorized representative of the mother of the child victim listed in report number 10-352094, the department must withhold this report in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is the authorized representative of the mother of the child victim, then, with the exception of basic information, the department may withhold report number 10-35294 under section 552.108(a)(1) of the Government Code. In releasing basic information in that case, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a stylized, cursive script.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

Ref: ID# 411977

Enc. Submitted documents

c: Requestor
(w/o enclosures)